INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

WRITTEN COMMENTS OF THE ISLAMIC REPUBLIC OF PAKISTAN

15 AUGUST 2024

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I. INTRODUCTION

1. These written comments are filed in accordance with the Court's Order dated 30 May 2024. Pakistan considers that the need for the Court to issue an advisory opinion is pronounced, given that climate change "presents a multifaceted challenge",[1] which constitutes "an urgent global challenge and a common concern of mankind",[2] and is an existential threat for all climate vulnerable countries.

2. In **Part II**, Pakistan examines two issues concerning **Question (*a*)** of the Request:

   a. **Section A** explains that the principle of prevention of significant transboundary harm has laid down obligations for States since at least the mid-twentieth century.

   b. **Section B** explains that the United Nations Framework Convention on Climate Change ("UNFCCC") régime is not *lex specialis*; it does not displace, modify, or limit the obligations of States under the principle of prevention.

3. In **Part III**, Pakistan addresses five issues concerning **Question (*b*)** of the Request:

   a. **Section A** sets out the legal threshold for the term "significant harm" as something more than "detectable", but not necessarily rising to "serious" or "substantial". It argues the Court should, in its assessment of what constitutes significant harm, consider the principle of common but differentiated responsibilities and respective capabilities ("CBDR-RC").

   b. **Section B** seeks to assist the Court in interpreting question (*b*)(i), by shedding light on the meaning to be ascribed to the terms "injured", "specially affected", and "vulnerable".

   c. **Section C** explains that there is a causal nexus between the acts and omissions of States causing significant harm to the climate system and the resulting damage to injured, specially affected and particularly vulnerable States.

   d. **Section D** explains, by reference to the jurisprudence of the Court, that an absence of *clear* evidence does not preclude the award of compensation.

   e. **Section E** briefly addresses the legal consequences for responsible States, i.e. to cease the wrongful conduct, provide assurances of non-repetition, and make reparations.

[1] Written Statement of the Kingdom of Saudi Arabia, para. 1.10.

[2] Written Statement of the People's Republic of China, para. 3.

II. QUESTION (A)

A. The well-established obligation of prevention applies in the present context

4. Some participants argue that the obligation of prevention does not apply in the present context of climate change.[3] The argument is presented in a number of ways.

5. First, some States argue that the release of greenhouse gas emissions does not involve harm that is transboundary; there is no single "point of origin" and the harm is global.[4] This is, however, immaterial. There is nothing in the Court's jurisprudence to support the contention that the obligation of prevention is incapable of applying in situations where the relevant harm materializes in the territory of more than one State, and there is no principled basis for imposing any such limitation.

6. Second, some States argue that the obligation of prevention cannot be "transposed" to the present context of climate change because the significant harm results from cumulative emissions from various sources.[5] This is incorrect as it misunderstands the nature and scope of the obligation which the Court enunciated in *Corfu Channel*. The obligation applies generally with respect to <u>all</u> forms of significant transboundary harm, as is evident from the Court's jurisprudence:

> "The Court recalls that in general international law it is 'every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States' (*Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 22). 'A State is thus obliged to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State' in a transboundary context".[6]

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[3] See Written Statement of Australia, paras. 4.7–4.11; Written Statement of Organization of Petroleum Exporting Countries ("OPEC"), para. 87; Written Statement of the Russian Federation, p. 8.

[4] Written Statement of the United States of America, paras. 4.15, 4.18. See also para. 4.11.

[5] Written Statement of Denmark, Finland, Iceland, Norway and Sweden, para. 71. See also the Written Statement of Australia, para. 4.10; Written Statement of New Zealand, para. 96.

[6] *Dispute over the Status and Use of the Waters of the Silala (Chile* v. *Bolivia), Judgment, I.C.J. Reports 2022*, p. 648, para. 99. See also G. Fitzmaurice, "The Older Generation of International Lawyer and the Question of Human Rights" (1968), vol. 21, Revista Espanola de Derecho Internacional, p. 481 (emphasis added), noting that the obligation had "found its application mainly as regards the use a State may physically make of its territory and the objects therein, or as regards its obligations relative to these, as in the *Corfu Channel* case. Other examples would be the obligation not to allow the pollution of waters flowing on to other States, or the escape of noxious fumes across the border. *But is there any reason of principle requiring a limitation to these sorts of case? Changed conditions — above all revolutionary developments in communications — have brought the nations psychologically as well as physically closer*."; O. Schachter, "The Emergence of International Environmental Law" (1991), vol. 44, Journal of International Affairs, pp. 460, 464 (who observed that the obligation applied

7. Third, some States contend that, since it does not "directly arise" in the present context, the obligation of prevention could not apply to any action taken by a State prior to it becoming a Party to the UNFCCC or the Paris Agreement adopted under the UNFCCC.[7] Pakistan addresses the relationship between the specialized conventions on climate change and the obligation of prevention in Section B below. For present purposes, it is sufficient to note that the obligation of prevention has been in existence since at least the middle of the twentieth century.[8] This is evident from State practice. For example:

   a. In 1957 Australia referred to the "general and well-recognized principle … that every State has an obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States".[9]

   b. In 1958 France observed that "[t]he preamble of the United Nations Charter has given States a solemn reminder that they have an obligation to live together as good neighbours. This has moreover always been a fundamental principle of international law"; this obligation included for States obligations relating to the "control of their frontiers and of the activities, on their territory or originating in their territory".[10]

   c. In 1964 Pakistan expressed its view that "[t]he legal principles established" in *Trail Smelter* and *Corfu Channel* were "rationally valid and correct".[11] It furthermore placed on record its view of "the international responsibility of a State in respect of acts done within its territory which have a detrimental effect in the territory" of another. Among the legal bases of this international responsibility was "the general principle of law expressed by the Latin maxim: *Sic utere tuo ut alienum non laedas*, that is, no one may exercise his right when this exercise causes damage to another".[12]

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generally, whether to "[i]njury to the atmosphere, such as ozone depletion, or *detrimental climate change*" (emphasis added)); M. Kamto, "Le nouveaux principes du droit international de l'environnement" (1993), Revue juridique de l'environnement, p. 16 (who observed that the principle of protection was "un principe de portée générale dans la mesure où il peut et doit s'appliquer à tous les domaines de l'environnement. *Ainsi pourrait-on le faire valoir en matière de climat*, de pollution, de protection de la couche d'ozone, de la désertification"(emphasis added)).

[7] Written Statement of Canada, para. 32; see also Written Statement of the United Kingdom, paras. 24.2, 27.3; Written Statement of the United States of America, para. 5.4.

[8] Pakistan agrees with the Written Statement of the Organization of African, Caribbean, and Pacific States ("OACPS"), paras. 148–150.

[9] General Assembly, 638th plenary meeting, 17 January 1957, p. 882, para. 57.

[10] Security Council, 824th meeting, 10 June 1958, pp. 45–46, para. 245.

[11] Asian–African Legal Consultative Committee, Sixth Session, 24 February–6 March 1964, (1964), "Statements of Delegates and Observers Made at the Fourth Session", p. 73.

[12] Asian–African Legal Consultative Committee, Report of the Eleventh Session, 19–29 January 1970, (1970), pp. 193–194. See also the positions to the same effect taken, in 1964, by Burma (Asian–African Legal Consultative Committee, Report of the Sixth Session, 24 February–6 March 1964, (1964), pp. 62–64) and Thailand (*ibid.*, pp. 226–227).

8. It follows that, if a State has — since the general international law obligation emerged in the mid-twentieth century at the latest — breached the obligation of prevention of significant harm in the context of anthropogenic greenhouse gas emissions, that State has breached an obligation of general application by which it was bound at the time of the commission of the act.[13]

9. Finally, as regards the due diligence obligation, which must be exercised by taking into consideration CBDR-RC,[14] Pakistan submits that the obligation to exercise due diligence requires States to do the utmost to achieve the intended result. The obligation is more demanding for riskier activities. In the context of climate change, this necessarily means that the obligation is stringent. Pakistan makes two points in this regard:

    a. First, Pakistan agrees in this context with the submission of the States that have argued that the due diligence obligation requires States to do the utmost to achieve the intended result.[15] The International Tribunal for the Law of the Sea ("ITLOS") advised in *Commission of Small Island States on Climate Change and International Law* that what is required under the due diligence obligation is for States "to make their best efforts", and that "it is an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost to obtain the intended result".[16]

    b. Second, Pakistan agrees with the submissions of States such as the People's Republic of China and Ecuador that argue that the standard of due diligence is more severe for riskier activities, and that in the context of climate change the risk of significant harm is as great as it could possibly be.[17] The argument is a reflection of what has been the position under general international law since at least the end of the nineteenth century. Thus the tribunal in the *Alabama* arbitration observed in 1871 that due diligence must be exercised "in exact proportion to the risks" to which

[13] As to the suggestion by some States (Written Statement of Canada, para. 32; Written Statement of the United States of America, para. 5.4) that obligations of States in respect of climate change have arisen only very recently, such as in the 1990s or later, and that any finding by the Court now as to the exact terms of obligations of States in respect of climate change would be prospective only, Pakistan disagrees. It points to the general principle that an interpretation which the Court places on a legal provision "has retrospective effect", in the sense that the terms of the obligation "must be held to have always borne the meaning placed upon them by this interpretation": *Access to German Minority Schools in Upper Silesia, Advisory Opinion, 1931, P.C.I.J., Series A/B, No. 40*, p. 19; see also J. Salmon, "Le fait dans l'application du droit international" (1982), vol. 175, *Recueil des Cours*, p. 358; H. Thirlway, *The International Court of Justice* (2016), p. 151; R. Kolb, *The International Court of Justice* (2013), p. 650.

[14] See Written Statement of Pakistan, paras. 40–46.

[15] See e.g. Written Statement of the People's Republic of China, para. 130; Written Statement of Ecuador, para. 3.23.

[16] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion*, 21 May 2024, para. 233 (internal quotation marks omitted).

[17] See e.g. Written Statement of Egypt, para. 103; Written Statement of Bangladesh, para. 90; Written Statement of Switzerland, para. 41.

third States might be exposed.[18] More recently the Seabed Disputes Chamber of ITLOS observed that "the standard of due diligence has to be more severe for the riskier activities".[19] ITLOS confirmed the position in *Commission of Small Island States on Climate Change and International Law*,[20] adding that the standard of due diligence that States must exercise in relation to marine pollution from anthropogenic greenhouse gas emissions must be "stringent".[21]

B. The UNFCCC does not displace, modify, or limit the principle of prevention

10. Pakistan agrees with the People's Republic of China that the General Assembly's request for an advisory opinion places particular emphasis on the principle of prevention of significant harm to the environment and the attendant duty of due diligence.[22] Pakistan notes that a number of States and international organizations argue that the principle of prevention is part of the applicable law in these proceedings.[23] Pakistan maintains its position that, in the context of anthropogenic greenhouse gas emissions and climate change, the scope of the principle of prevention "is not reflected in the commitments that States Parties to the UNFCCC and the Paris Agreement have thus far undertaken pursuant to those agreements".[24]

11. Some States argue that the UNFCCC régime should — on the basis of the *lex specialis* principle or otherwise — displace, modify, or limit the *lex generalis* of the principle of prevention. The effect of this argument is said to be that general international law does not

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[18] *Alabama claims of the United States of America against Great Britain* (1871), vol. XXIX, R.I.A.A., p. 129. Reuter observed that "la vigilance doit être ajustée à la prévisibilité des incidents générateurs des dommages, notamment aux mises en garde qui ont été adressées aux autorités gouvernementales": *Droit international public* (6th edn., 1983), p. 259, with reference to *De Brissot* (1889) Moore, *History and Digest*, vol. III, p. 2969 and *Wipperman* (1890), Moore, *History and Digest*, vol. III, p. 3041.

[19] *Responsibilities and Obligations of States with Respect to Activities in the Area, ITLOS Reports 2011*, p. 43, para. 117.

[20] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion*, 21 May 2024, para. 239.

[21] *Ibid.*, para. 241

[22] Written Statement of the People's Republic of China, para. 126.

[23] See e.g. Written Statement of the African Union, paras. 54–56; Written Statement of Egypt, paras. 98, 330; Written Statement of the Democratic Republic of the Congo, para. 138; Written Statement of Burkina Faso, paras. 161–163; Written Statement of Sri Lanka, paras. 95–96; Written Statement of Sierra Leone, para. 3.10; Written Statement of Ecuador, para. 3.18; Written Statement of Belize, paras. 31–33; Written Statement of Seychelles, paras. 101–102; Written Statement of the Republic of Korea, para. 33; Written Statement of Kenya, paras. 5.3–5.4; Written Statement of Slovenia, paras. 18, 40; Written Statement of Mauritius, para. 189; Written Statement of the International Union for Conservation of Nature, paras. 308–309; Written Statement of Thailand, para. 9; Written Statement of Costa Rica, paras. 40–49; Written Statement of the Bahamas, para. 92; Written Statement of Chile, paras. 35–37.

[24] Written Statement of Pakistan, para. 48; see also the Written Statement of Belize, para. 36.

lay down any obligations for States in respect of climate change that go beyond what States have specifically agreed to in the UNFCCC and the Paris Agreement adopted under the UNFCCC.[25] Pakistan disagrees.

12. The position of Pakistan is that the UNFCCC régime is not *lex specialis*: it does not otherwise displace, modify, or limit the principle of prevention.[26] The argument to the contrary is inconsistent with international law. Pakistan makes two points.

13. First, as a preliminary observation, it is unsurprising that in the field of international environmental law (as in any other field of international law) obligations under general international law and obligations under treaty law apply in parallel. The Court has observed that: "Throughout its history, the development of international law has been influenced by the requirements of international life".[27] As the tribunal in *Southern Bluefin Tuna* — a case concerning the marine environment and whether one treaty régime was *lex specialis* vis-à-vis another — recognized:

> "it is a commonplace of international law and State practice for more than one treaty to bear upon a particular dispute. There is no reason why a given act of a State may not violate its obligations under more than one treaty. There is frequently a parallelism of treaties, both in their substantive content and in their provisions for settlement of disputes arising thereunder. The current range of international legal obligations benefits from a process of accretion and cumulation".[28]

14. This is no less true of the relationship between treaties and general international law and of the "multifaceted challenge"[29] that climate change presents.

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[25] See e.g. Written Statement of Japan, para. 14; Written Statement of South Africa, para. 14; Written Statement of Kuwait, para. 8; Written Statement of the Russian Federation, p. 20; Written Statement of Australia, para. 4.11.

[26] See e.g. Written Statement of Vanuatu, paras. 208–210, 517; Written Statement of Grenada, para. 37; Written Statement of Bahamas, paras. 89–91; Written Statement of Samoa, paras. 131–139; Written Statement of Ecuador, para. 3.17; Written Statement of African Union, paras. 55, 99; Written Statement of Chile, paras. 60, 71–79; Written Statement of Costa Rica, paras. 32, 91; Written Statement of Colombia, paras. 3.9–3.10; Written Statement of Cook Islands, paras. 135–142; Written Statement of Albania, footnote 195; Written Statement of Switzerland, paras. 66–71; Written Statement of Egypt, para. 73; Written Statement of New Zealand, para. 86.

[27] *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, p. 178. See also C. Greenwood, "Unity and Diversity in International Law" in M. Andenas & E. Bjorge (eds.), *A Farewell to Fragmentation* (2015), p. 54: "[d]iversity is inevitable in an international community characterised by decentralisation and the absence of a global legislature."

[28] *Southern Bluefin Tuna (Australia and New Zealand* v. *Japan)*, (2000), vol. 119, I.L.R., p. 548, para. 52.

[29] Written Statement of the Kingdom of Saudi Arabia, para. 1.10.

15. Second, against this background, international courts and tribunals have refused to accede to arguments of *lex specialis* unless one of two requirements has been fulfilled. As the International Law Commission ("ILC") recognized,

> "[f]or the *lex specialis* principle to apply it is not enough that the same subject matter is dealt with by two provisions; there must be some actual inconsistency between them, or else a discernible intention that one provision is to exclude the other".[30]

16. As to the first requirement — that there must be some actual inconsistency between the two bodies of law — Pakistan submits that there is no actual inconsistency between the obligation of prevention and the specialized treaty régime relating to climate change. There is nothing to prevent a State party to the UNFCCC régime from complying with both that régime and the principle of prevention. The UNFCCC has explicitly recognized in Article 3(3) that Parties should take precautionary measures to anticipate, prevent, or minimize the causes of climate change and mitigate its adverse effects. Article 3 also provides that policies and measures to achieve this should take into account different socio-economic contexts. The obligation to undertake precautionary measures should be read in conjunction with Article 3(4).

17. Consistent with this, ITLOS in its recent advisory opinion expressly rejected the argument that the UNFCCC is a *lex specialis* régime that "modifies or limits the obligations under the Convention [i.e., the United Nations Convention on the Law of the Sea "UNCLOS"]", reasoning that:[31]

> "The Convention and the Paris Agreement are separate agreements, with separate sets of obligations. While the Paris Agreement complements the Convention in relation to the obligation to regulate marine pollution from anthropogenic GHG emissions, the former does not supersede the latter. … The Tribunal also does not consider that the Paris Agreement modifies or limits the obligation under the Convention. In the Tribunal's view, the Paris Agreement is not *lex specialis* to the Convention and thus, in the present context, *lex specialis derogat legi generali* has no place in the interpretation of the Convention."[32]

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[30] Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, art. 55, commentary, para. 4; see also Report of the Study Group of the International Law Commission, finalized by Mr. Martti Koskenniemi, Yearbook of the International Law Commission 2006, Volume II, Part One, A/CN.4/SER.A/2006/Add.1 (Part 1/Add.2), p. 25, para. 89.

[31] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion*, 21 May 2024, paras. 223–224.

[32] *Ibidem.*

18. As regards the second requirement — that there must be a discernible intention that one provision is to exclude the other — Pakistan submits that this requirement is also far from being met in the present context.

19. It is evident from the Court's jurisprudence that clear evidence of an intention to exclude the obligation of prevention through express language would be required:

    a. In *Construction of a Road in Costa Rica along the San Juan River*, Nicaragua asserted that an 1858 Treaty of Limits,[33] which applied between the parties in the case, constituted the *lex specialis* in relation to the obligation under general international law to notify and consult.[34] The Court disagreed. It concluded that: "the fact that the 1858 Treaty may contain limited obligations concerning notification or consultation in specific situations does not exclude any other procedural obligations with regard to transboundary harm which may exist in treaty or customary international law".[35]

    b. In *ELSI*, a Chamber of the Court observed that the parties to a treaty could, if they so elected, agree that an important principle of general international law should not apply between them; yet the Chamber was "unable to accept that an important principle of customary international law should be held to have been tacitly dispensed with, in the absence of any words making clear an intention to do so."[36]

20. In the present context, there is no evidence that the States parties to the UNFCCC and the Paris Agreement adopted under the UNFCCC intended, by concluding those treaties, to exclude the obligation of prevention under general international law.

    a. There are no "words making clear" such an intention. To the contrary, as noted in Pakistan's written statement,[37] the UNFCCC expressly *recognizes* the existence of this obligation in its preamble, which recalls:

> "that States have, in accordance with the Charter of the United Nations and the principles of international law, … the responsibility to ensure that activities

[33] 15 April 1858, 118 *C.T.S.* 439.

[34] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015*, p. 708, para. 107.

[35] *Ibid.*, p. 708, para. 108.

[36] *Elettronica Sicula S.p.A., Judgment, I.C.J. Reports 1989*, p. 42, para. 50; see also *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America)*, Judgment of 30 March 2023, para. 207. See also Report of the Study Group of the International Law Commission, finalized by Mr. Martti Koskenniemi, Yearbook of the International Law Commission 2006, Volume II, Part One, A/CN.4/SER.A/2006/Add.1 (Part 1/Add.2), p. 43, para. 184: "the general rules operate unless their operation has been expressly excluded".

[37] Written Statement of Pakistan, para. 36.

within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

b. Further, a number of (specially affected) States expressly declared upon ratification of the UNFCCC and/or the Paris Agreement that no provision of those treaties is to be interpreted as derogating from principles of general international law.[38] None of these declarations attracted any protest.

21. Since the obligation of prevention has not been excluded, it continues to apply in parallel. Australia's contention that "neither the substantive nor the procedural aspects of the principle of prevention are otherwise incorporated into the specialised climate change treaties" has no application since the obligation of prevention does not depend, for its application, on any such incorporation.[39]

22. For completeness, if the Court were (as Pakistan contends it should not) to advise that the UNFCCC treaty régime, or specifically the Paris Agreement adopted under the UNFCCC, *did* have the effect of displacing, modifying, or limiting the obligations of States under the principle of prevention, such an effect could be said to have occurred at the earliest from the time when the treaty régime, or the relevant part of it, came into force: i.e., 21 March 1994 or 4 November 2016 respectively.

[38] See the interpretative declarations of: Nauru, 1771 *U.N.T.S.* 318; 3156 *U.N.T.S.* 95 (no provisions in the Convention or the Paris Agreement "can be interpreted as derogating from the principles of general international law"); Cook Islands, 3156 *U.N.T.S.* 87 ("no provision in the Paris Agreement can be interpreted as derogating from principles of general international law"); Fiji, 1771 *U.N.T.S.* 317 ("no provisions in the Convention can be interpreted as derogating from the principles of general international law"); Kiribati, 1771 *U.N.T.S.* 317–318 ("no provisions in the Convention can be interpreted as derogating from the principles of general international law"); Marshall Islands, 3156 *U.N.T.S.* 92 ("ratification of the *Paris Agreement* shall in no way constitute a renunciation of any rights under any other laws, including international law"); the Federated States of Micronesia, 3156 *U.N.T.S.* 94 ("no provision in this Paris Agreement can be interpreted as derogating from principles of general international law"); Niue, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en ("no provision in the Paris Agreement can be interpreted as derogating from principles of general international law"); Papua New Guinea, 1771 *U.N.T.S.* 321 ("ratification of the Convention shall in no way constitute a renunciation of any rights under International Law concerning State responsibility for the adverse effects of Climate Change as derogating from the principles of general International Law"); the Philippines, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en ("its accession to and the implementation of the Paris Agreement shall in no way constitute a renunciation of rights under any local and international laws or treaties"); Solomon Islands, 3156 *U.N.T.S.* 96 ("no provision in the Paris Agreement can be interpreted as derogating from principles of general international law"); Tuvalu, 1771 *U.N.T.S.* 318 ("no provisions in the Convention can be interpreted as derogating from the principles of general international law"); 3156 *U.N.T.S.* 97 ("no provision in the Paris Agreement can be interpreted as derogating from principles of general international law"); and Vanuatu, 3156 *U.N.T.S.* 98 ("ratification of the *Paris Agreement* shall in no way constitute a renunciation of any rights under any other laws, including international law").

[39] Written Statement of Australia, para. 4.11.

III. QUESTION (B)

23. Pakistan invites the Court to affirm that the general principles of State responsibility are applicable to the questions posed by the General Assembly in these proceedings.

24. It is crucial at the outset to emphasize that the questions posed by the General Assembly are of a legal nature. Therefore, in order for the Court to render an advisory opinion, it is not required to make any findings of fact regarding the legal responsibility of any specific State.[40]

A. The threshold of "Significant Harm"

25. Question (*b*) is concerned only with the legal consequences for those States whose acts and omissions have caused significant harm to the climate system and other parts of the environment. This threshold recognizes that developed States have contributed the largest share of historic and current greenhouse gas emissions,[41] in contrast to developing States, which have made only a negligible contribution to global emissions.

26. Pakistan agrees with the States that argue that the Court's assessment of Question (*b*) should take into account the principle of CBDR-RC.[42] In respect to "significant harm", Pakistan agrees with the submission of Viet Nam that:

> "*responsibility for climate change is not evenly shared among States*. Instead, a fair distribution of this responsibility requires specific considerations *including historical contributions, vulnerability, and capacity of different nations to address climate change.* Accordingly, Viet Nam submits that the Principle of CBDR-RC as enshrined in various international agreements must be taken into account in determining the legal consequences for States which have caused significant harm to the climate system."[43]

[40] See e.g. the Written Statement of the Kingdom of Saudi Arabia, para. 6.2; Written Statement of Indonesia, para. 75; Written Statement of the European Union, para. 323; Written Statement of Costa Rica, para. 96; Written Statement of the Republic of Korea, para. 42; Written Statements of the Governments of Denmark, Finland, Iceland, Norway and Sweden, para. 99; and Written Statement of Ecuador, para. 4.5.

[41] Written Statement of Timor Leste, para. 365; Written Statement of Viet Nam, para. 43; and Written Statement of OACPS, para. 141.

[42] See e.g. the Written Statement of Argentina, para. 39; Written Statement of Bolivia, para. 44; Written Statement of Costa Rica, para. 116; Written Statement of Seychelles, para. 154; Written Statement of the Solomon Islands, para. 244; and Written Statement of Tonga, para. 307.

[43] Written Statement of Viet Nam, para. 45 (footnotes omitted).

27. According to Australia, the legal threshold for what constitutes "significant harm" is *serious* harm.[44] While it is true that the awards in *Trail Smelter* and *Lake Lanoux* adopted stringent thresholds, "serious consequences" and "*gravement*" respectively,[45] international law has gradually come to adopt a lower threshold for what constitutes "significant harm". As Sachariew noted in 1990:

> "The second half of our century — especially since the beginning of the 1970s — is marked by a growing awareness of the global effects produced by environmentally harmful activities. In this period environmental law emerged as a new branch of international law characterized by an abundance of multilateral conventions in many fields, constituting an impressive network of rights and obligations of States. *The standard set by the Trail Smelter case, although remaining topical in many aspects, is increasingly regarded as containing too high a threshold* and relying too heavily on State responsibility… *In almost all bilateral and multilateral binding legal instruments as well as in the codification efforts of learned societies and the documents prepared by competent international bodies since the 1972 Stockholm Conference the term 'significant' is used to describe the threshold of tolerable transboundary environmental harm or interference.*"[46]

28. The correct position is that "significant" means harm which is more than "detectable" but need not be at the level of "serious" or "substantial".[47] This threshold was recently applied by ITLOS in the *Commission of Small Island States on Climate Change and International Law* to clarify the term "significant" as used in Articles 196 and 206 of UNCLOS.[48] Pakistan also agrees with Thailand, which contends that this formulation is sufficiently broad to avoid unduly restricting the principle of prevention, in contrast to the need for serious harm.[49]

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[44] Written Statement of Australia, para. 5.9 (footnotes omitted).

[45] *Trail Smelter case (United States, Canada)* (1941), vol. II, R.I.A.A, p. 1905; *Affaire du Lac Lanoux (Espagne, France)* (1957), vol. XII, p. 281. See also X. Hanqin, *Transboundary Damage in International Law* (2003), p. 158.

[46] K. Sachariew, "The Definition of Thresholds of Tolerance for Transboundary Environmental Injury Under International Law: Development and Present Status" (1990), vol. 37, Netherlands International Law Review, pp. 193–206, 195–196 (emphasis added) (footnotes omitted); see also X. Hanqin, *Transboundary Damage in International Law* (2003), pp. 158–160.

[47] Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, with commentaries, 2001, Yearbook of the International Law Commission, vol. II, Part Two, art. 2, para. 4.

[48] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion*, 21 May 2024, para. 433.

[49] Written Statement of Thailand, para. 30.

29. Therefore, Pakistan submits that the Court should apply the legal threshold of "significant harm" as outlined by the ILC, taking into account the principle of CBDR-RC.[50]

30. In the context of the present proceedings, Pakistan submits that significant harm has for decades resulted from emissions caused by certain States. This conduct, considered cumulatively, constitutes an internationally wrongful act.[51]

31. States whose past and present cumulative emissions are insufficient to reach the threshold of significant harm have, by contrast, not engaged, or are not engaging, in causing significant harm to the environment within the meaning of the question put to the Court.[52]

32. The determination of whether acts and omissions of a particular State have in fact caused "significant harm" must ultimately be made on a case-by-case basis. This assessment should consider the detrimental effects on the environment, human health, industry, property, and agriculture in other States[53] as well as damage to areas beyond national jurisdiction. Such an assessment should also take into account the period in which such a determination is made.[54] Greenhouse gas emissions, as observed since the mid-twentieth century, remain the dominant cause of global warming, and have led to extreme events which have caused widespread loss and damage to the environment and people in various States.[55]

B. States that are "Injured", "Specially Affected", and "Particularly Vulnerable to the adverse effects of Climate Change"

33. The General Assembly's request places particular emphasis on the legal consequences for States which have caused significant harm to the climate system and the environment with respect to:

[50] See also the Written Statement of Pakistan, para. 38.

[51] Article 15 of the ILC Articles on the Responsibility of States for Internationally Wrongful Acts.

[52] See also Written Statement of Albania, para. 130(d); Written Statement of Egypt, para. 304.

[53] Written Statement of Pakistan, para. 38.

[54] Written Statement of Pakistan, para. 38.

[55] See Section III(C).

> "States, in particular, small island developing States, which due to their geographical circumstances and level of development, are *injured* or *specially affected* by or are *particularly vulnerable* to the adverse effects of climate change".[56]

34. The terms "injured" and "specially affected" are reflected in different provisions of the Articles on the Responsibility of States for Internationally Wrongful Acts ("ARSIWA").[57] The concept of "injury" is defined to encompass "any damage, whether material or moral, caused by the internationally wrongful act of a State".[58]

35. A State may be injured in the following circumstances.

36. First, if the obligation breached was owed to the State individually, through a bilateral or a multilateral treaty or on the basis of customary international law.[59]

37. Second, an injury may also stem from an obligation being owed to "a group of States including that State, or the international community as a whole" and the breach "*specially affects*" that State.[60] The ILC defines this in the following manner:

> "Even in cases where the legal effects of an internationally wrongful act extend by implication to the whole group of States bound by the obligation or to the international community as a whole, the wrongful act may have particular adverse effects on one State or on a small number of States … [In other words,] for a State to be considered injured it must be affected by the breach in a way which distinguishes it from the generality of other States to which the obligation is owed."[61]

38. On this basis, Pakistan agrees that not all States would be entitled to be classified as "specially affected". It is only those States which have faced the effects of climate change in the form of, *inter alia*, floods, "persistent drought and extreme weather events, land loss and degradation, sea level rise, coastal erosion, ocean acidification and the retreat of mountain glaciers, leading to displacement of affected persons and further threatening food

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[56] Emphases added.

[57] The term "injured" or "injury" appears in Arts. 31, 34, 37, 39, 42, 43, 45–49, 51–52, and 54 of ARSIWA, and the term "specially affected" appears in Art. 42 of ARSIWA; see also Written Statement of Vanuatu, paras. 545–551.

[58] Article 31(2) of the ILC Articles on the Responsibility of States for Internationally Wrongful Acts.

[59] Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, art. 42, commentary, paras. 6–8.

[60] Article 42(b)(i) of the ILC Articles on the Responsibility of States for Internationally Wrongful Acts.

[61] Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, art. 42, commentary, para. 13.

security, water availability and livelihoods".[62] As is evident from the Question (*b*)(i), it is not only small island developing States and least developed countries, but also other States that qualify as being "injured or specially affected or are particularly vulnerable to the adverse effects of climate change". Pakistan is, by reason of its circumstances, one such State.

39. Third, a State is, pursuant to Article 42(b)(ii) of ARSIWA, injured when the breached obligation owed to a group of States is "of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation." Describing both this category of injury and the previous one, Vanuatu explains that:

> "A treaty context such as that of the UNFCCC and the Paris Agreement falls both under the previous category of obligations and this category. This is because if a given State and, even more so, a group of States… (cause(s) significant harm to the climate system or other parts of the environment), performance of the obligations under the treaty by the other parties loses its *raison d'être*."[63]

40. Finally, Question (*b*)(i) in the General Assembly's request also uses the term "particularly vulnerable". It is important in this context to underscore that this constitutes a standalone category of States, independent of whether they have been "injured" or "specially affected".[64]

41. Pakistan agrees with the way in which the term has been elaborated upon by other participants in these proceedings:[65] Timor Leste understands the term to include "those which suffer most from the deleterious effects and existential threat of climate change. States Parties to the UNFCCC and Paris Agreement have "explicitly recognised 'developing countries' as a category of States that are 'particularly vulnerable to the adverse effects of climate change'."[66]

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[62] Preambular para. 8, UNGA resolution 77/276.

[63] Written Statement of Vanuatu, para. 551.

[64] See the point made in paras. 33–38 above as regards what types of State qualify as "injured or specially affected".

[65] See the Written Statement of the Dominican Republic, para. 4.54; Written Statement of Ecuador, para. 4.9; and Written Statement of Melanesian Spearhead Group, para. 311.

[66] Written Statement of Timor Leste, para. 360.

42. The term "vulnerable" features in the UNFCCC[67] and the Paris Agreement.[68] The IPCC glossary defines the term "vulnerability" as "the propensity or predisposition to be adversely affected. Vulnerability encompasses a variety of concepts and elements, including *sensitivity* or *susceptibility to harm* and *lack of capacity to cope and adapt*."[69]

43. As detailed in its Written Statement, Pakistan has suffered some of the most severe effects of climate change including heavy floods, droughts, desertification and glacial melting. These increasingly intense and frequent events result in the loss of human lives, pose economic and development challenges, and cause damage to agricultural productivity, soil, forests and biodiversity. They have also affected livelihoods and human health, resulting in massive internal displacement, hunger, and poverty.[70]

44. Pakistan submits, that it is among the category of States that are "injured" and "specially affected" *and* remains "particularly vulnerable" to the adverse effects of climate change.

45. Such States are entitled to invoke the responsibility of wrongdoing States that have caused significant harm to the climate system and other parts of the environment. The invocation of responsibility by one State does not prejudice the rights of other, similarly situated States, which are equally entitled to invoke the responsibility of those States whose greenhouse gas emissions rise to the level of significant harm.[71] Additionally, this invocation is not precluded by the fact that the internationally wrongful act of damaging the climate system has been caused by a plurality of States.[72]

C. Questions of causation in the context of reparations

46. The "allocation of injury or loss to a wrongful act is, in principle, a legal and not only a historical or causal process", and the requirement of a causal link is not necessarily the

[67] See the preamble, Arts. 3(2), 4(4), and 4(10).

[68] See the preamble, Arts. 6(6), 7(2), 7(6), 9(4), and 11(1).

[69] Intergovernmental Panel on Climate Change ("IPCC"), *Global Warming of 1.5°C*, Annex I: Glossary (2018), p. 560 (emphases added); Written Statement of Vanuatu, para. 553.

[70] See generally Written Statement of Pakistan, Part I.

[71] Article 46 of the ILC Articles on the Responsibility of States for Internationally Wrongful Acts.

[72] *Ibid.*, Article 47.

same in relation to every breach of an international obligation.[73] It cannot be satisfactorily solved by searching for a single formula.[74]

47. Pakistan observes that, as regards causation, the primary point of contention is whether a causal nexus can be established between the conduct of wrongdoing States and the resultant injury sustained by States that fall within the categories described in Section III(B).

48. On the one hand, a number of participants contend that the obligation to make reparations will apply only where it is established that significant harm has resulted from particular wrongful acts, including the release of particular emissions:

    a. Australia argues that "[f]or a State to be obliged to make reparation for particular damage it must be established as a matter of *fact*, that the damage was caused by the State's wrongful act … It must also be established that the particular damage was caused by the State's wrongful act as a matter of *law*. That is why a State is not required to make reparation for damage that is too remote or uncertain.[75]

    b. The United States of America argues that, "[u]nder the customary international law of State responsibility, a causal link between the internationally wrongful act and any injury alleged is required. Such a link ensures that reparation is tied to injury resulting from and ascribable to the wrongful act, rather than any and all consequences flowing from an internationally wrongful act. A determination regarding any reparation that is owed cannot be based on events or circumstances not attributable to the alleged breach."[76] The United States continues that "any causation analysis would have to take into account that climate-related events — both extreme weather events and slow onset events — have multiple causes and are not driven solely by global warming resulting from anthropogenic GHG emissions."[77]

    c. OPEC argues that "[t]here are, moreover, a myriad of factors that have impacted the climate system. Many of these causes are historical, like the exponential increase in emissions due to the Industrial Revolution, revealing some of its effects today, and others through natural causes. Thus to establish that States are to be liable

[73] Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, art. 31, commentary para. 10; James Crawford, *State Responsibility: The General Part* (2013), p. 492; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022*, p. 48, para. 93.

[74] Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, art. 31, commentary para. 10. See also the Written Statement of the United States of America, para. 5.10; Written Statement of Singapore, para. 4.14; and Written Statement of Australia, para. 5.8.

[75] Written Statement of Australia, para. 5.8 (footnotes omitted).

[76] Written Statement of the United States of America, para. 5.7 (internal quotations and footnotes omitted).

[77] *Ibid.*, para. 5.10 (footnotes omitted).

for damage to the environment individually or collectively, is misleading and lacks the preciseness that rulings on these matters require before declaring a judgment."[78]

49. A number of participants have taken their stance on a more principled basis. For example:

a. Vanuatu argues that the "causal link is incontrovertible given the existing scientific consensus politically endorsed by all States of the IPCC. Whether the Court analyses the legal consequences of the Relevant Conduct displayed by one or more specific States, or by a group of States taken as a whole, or even of whichever State performs the Relevant Conduct, there is no uncertainty arising from Question (b) in relation to the causal link".[79]

b. Sierra Leone argues that "[t]he difficulties in establishing a precise causal link between a particular climate change event and a particular State's GHG emissions do not eliminate the consequences of the State's breach and obligation to make full reparation."[80]

c. OACPS states that, "[c]oncerning the socio-economic impacts of the conduct responsible for climate change, the OACPS maintains that the resulting damage is also compensable to the extent that there is a sufficient and direct causality between breach of the obligation and the injury. The IPCC has established that climate change and its adverse impacts have socio-economic costs on the most affected States. Given the scientific consensus that the anthropogenic emissions of greenhouse gases are the cause of climate change and its adverse effects, the OACPS concludes that States have made a significant contribution to the problem in terms of emissions are responsible for the socio-economic damage to the most affected States. It follows that they owe compensation for such damage."[81]

50. Pakistan agrees with these States, and argues that causation can be established for six reasons:

a. First, as noted in preambular paragraph 9 of resolution 77/276, the IPCC reports and the best available science is clear that anthropogenic greenhouse gas emissions are the *extremely likely* and dominant cause of the observed warming since the mid-twentieth century.[82]

[78] Written Statement of OPEC, para. 117 (footnotes omitted). See also the Written Statement of the Kingdom of Saudi Arabia, para. 6.7; Written Statement of the People's Republic of China, para. 136; Written Statement of the Russian Federation, p. 16.

[79] Written Statement of Vanuatu, para. 562.

[80] Written Statement of Sierra Leone, para. 3.145.

[81] Written Statement of OACPS, para. 185.

[82] See for example Intergovernmental Panel on Climate Change, *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2014), statement 1.2; Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers (2021), statement A.1; Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability.*

b. Second, the best available science is capable of identifying the estimated historic and present greenhouse gas emissions of specific States that have caused significant harm to the environment.[83]

c. Third, the absence of clear evidence as to the significant harm caused by certain States does not preclude the award of compensation.[84]

d. Fourth, in instances where injury has been caused by a combination of factors, only one of which can be ascribed to the responsible State, international practice and the decisions of international tribunals, including that of this Court,[85] do not support the reduction or attenuation of reparation for concurrent causes, except in cases of contributory fault.[86] In the *Zafiro* case, the tribunal placed the onus on the responsible State to show what proportion of the damage was *not* attributable to its conduct.[87]

e. Fifth, the Court has recognized instances where a *flexible approach* is warranted as regards proving particular facts.[88] It has also acknowledged that "the state of science regarding the causal link between the wrongful act and the damage may be uncertain".[89]

f. Sixth, the same equitable considerations that have allowed this Court to determine the amount of compensation in absence of adequate evidence as to the precise extent of damage should be applied when assessing whether a sufficient causal nexus has been established.[90] States causing significant harm to the climate system and other parts of the environment should not be permitted to evade legal responsibility by

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Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Summary for Policymakers (2022), statement B.1; Intergovernmental Panel on Climate Change, Synthesis Report of the IPCC Sixth Assessment Report (AR6). Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Summary for Policymakers (2023), statement A.1; see also the Written Statement of Vanuatu, paras. 159–170.

[83] *See e.g.* United Nations Environment Programme, *Emissions Gap Report* (2022) and Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change*. *Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, statements B.3.1 and B.3.2.

[84] On this point *see* Section III(D).

[85] *Corfu Channel (United Kingdom* v. *Albania), Assessment of Amount of Compensation, Judgment, I.C.J. Reports 1949*, p. 250; *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, pp. 31–33.

[86] Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, art. 31, commentary, para. 12.

[87] *Zafiro case* (*Great Britain* v. *United States)* (1925), vol. VI, R.I.A.A., pp. 164–165; Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, art. 31, commentary, para. 13.

[88] *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, p. 26, para. 33;

[89] *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, p. 26, para. 34; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022*, pp. 122–123, para. 93.

[90] Written Statement of Sierra Leone, para. 3.145; see also Section III(D).

> exploiting any gaps or ambiguities in establishing causation. As the tribunal in *Trail Smelter* observed, "it would be *a perversion of fundamental principles of justice* to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts."[91]

51. Nevertheless, the existence of the requisite causal nexus is to be made on a case-by-case basis, as "difficulties [in establishing causation] must be addressed as and when they arise in light of the facts of the case at hand and the evidence presented to the Court."[92]

52. Pakistan submits that the advice sought by the General Assembly requires the Court to determine *only* whether, as a matter of law and in principle, a causal nexus can be established in the present context. In Pakistan's view, the Court should, based on the reasons outlined above, answer in the affirmative.

D. Absence of clear evidence of significant harm does not preclude the award of compensation

53. Consistent with the Court's jurisprudence, and in line with arguments made by other participants in these proceedings,[93] Pakistan argues that any purported difficulties in estimating damages cannot absolve States that have caused significant harm to the climate system and other parts of the environment from their obligations flowing from such a breach, including the obligation to provide compensation.

54. In *Trail Smelter*, the tribunal ruled that:

> "[w]here the tort itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts. In such case, while the damages may not be determined by mere speculation or guess, *it will be enough if the evidence show the extent of the damages*

[91] *Trail Smelter case (United States, Canada)* (1941), vol. II, R.I.A.A, p. 1920; see also United Nations Committee on the Rights of the Child, Decision Adopted in Respect of Communication No. 104/2019, *Sacchi et al.* v. *Argentina*, document CRC/C/88/D/104/2019 (22 September 2021), para. 10.10 ("[The] collective nature of the causation of climate change does not absolve the State party of its individual responsibility that may derive from the harm that the emissions originating within its territory may cause to children, whatever their location.").

[92] *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, p. 26, para. 34.

[93] See e.g. Written Statement of African Union, paras. 287–288; Written Statement of the Commission of Small Island States on Climate Change and International Law, para. 187; Written Statement of Vanuatu, paras. 591–592; Written Statement of Barbados, paras. 260–261; Written Statement of Kenya, paras. 6.107–6.108; Written Statement of OACPS, para. 180; Written Statement of Tuvalu, para. 144; and Written Statement of Sierra Leone, para. 3.144.

as a matter of just and reasonable inference, although the result be only approximate".[94]

55. In *Certain Activities Carried Out by Nicaragua in the Border Area*, the Court acknowledged that environmental damage is compensable, in and of itself, and gives rise to compensation for expenses incurred by an injured State as a consequence of such damage.[95] The Court further observed that compensation is not precluded in all situations where there is a lack of adequate evidence, and may be determined in light of equitable considerations.[96] In particular, the Court held that:

> "damage may be due to several concurrent causes, or the state of the science regarding the causal link between the wrongful act and the damage may be uncertain. … These are difficulties that must be addressed as and when they arise in light of the facts of the case at hand and the evidence presented to the Court. Ultimately, it is for the Court to decide whether there is a sufficient causal nexus between the wrongful act and the injury suffered."[97]

56. Although international law does not prescribe any specific method of valuation for the purposes of compensation for environmental damage,[98] in situations where precise quantification cannot be carried out, the Court has sought to rely on figures or estimates that are *reasonable*.[99] In *Certain Activities Carried Out by Nicaragua in the Border Area*, for example, the Court approached the valuation of environmental damage "from the perspective of the ecosystem as a whole, by adopting an overall assessment of the impairment of loss of environmental goods and services".[100]

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[94] *Trail Smelter case (United States, Canada)* (1941), vol. II, R.I.A.A, p. 1920 (emphasis added).

[95] *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, p. 28, paras. 41–43; Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, art. 36, commentary para. 15.

[96] *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, pp. 26–27, para. 35; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022*, pp. 51–52, para. 106; *Case Concerning Ahamdou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of Congo), Compensation, Judgment*, p. 337, para. 33.

[97] *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, p. 26, para. 34.

[98] *Ibid.*, p. 31, para. 52.

[99] *Corfu Channel (United Kingdom* v. *Albania), Assessment of Amount of Compensation, Judgment, I.C.J. Reports 1949*, p. 260; see also *Final Award, Eritrea's Damages Claims* (2009), vol. XXVI, R.I.A.A., para. 37.

[100] *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, p. 37, para. 78.

57. Pakistan accordingly submits that, in line with the Court's jurisprudence and the developments in attribution science and valuation methodologies,[101] States that have caused significant harm to the environment should not be permitted to evade liability on the basis of any purported absence of clear evidence or challenges in calculating compensation.[102]

E. Legal consequences for States that have caused significant harm to the climate system and other parts of the environment

58. Pakistan submits that States which, through their acts and omissions, have caused significant harm to the climate system and parts of the environment owe legal responsibility to States that have thereby been injured.

59. Most importantly, Pakistan submits that States whose conduct rises to the level of "significant harm" must cease their wrongful acts and omissions,[103] and provide assurances of non-repetition.[104] This entails, *inter alia*, adopting measures to achieve deep cuts in their greenhouse gas emissions and, more generally, bringing their conduct into conformity with the primary obligations binding upon them. In this regard, Pakistan observes that Article 4(4) of the Paris Agreement lays down an obligation for developed country Parties to "continue taking the lead by undertaking economy-wide absolute emission reduction targets".

60. Nevertheless, even if the internationally wrongful acts and omissions have ceased, the responsible States are under an obligation to re-establish, by way of reparation, the situation which existed before the wrongful act was committed.[105]

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[101] See the Written Statement of Sierra Leone, para. 3.144 and the authorities cited therein.

[102] *Trail Smelter case (United States, Canada)* (1941), vol. II, R.I.A.A, p. 1920; *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, p. 27, para. 35; see also Written Statement of Albania, para. 139; Written Statement of Antigua and Barbuda, para. 543.

[103] Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, art. 30, commentary para. 2 (This obligation applies "regardless of whether the conduct of a State is an action or an omission" since "there may be cessation consisting in abstaining from certain actions".); see also *Case Concerning the difference between New Zealand and France concerning the interpretation or application of two agreements, concluded on 9 July 1986 between the two States and which related to the problems arising from the Rainbow Warrior Affair* (1990), vol. XX, R.I.A.A, p. 270, para. 113.

[104] Article 30 of the ILC Articles on the Responsibility of States for Internationally Wrongful Acts.

[105] *Factory at Chorzów, Merits, Judgment, 1928, P.C.I.J., Series A, No. 13*, p. 47; *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012*, p. 153, para. 137; *Legal*

61. Reparation can take three forms: restitution, compensation, and satisfaction[106]. Restitution is the preferred and primary remedy wherever it is possible to return the injured party to a situation as if the wrongful act had not occurred.[107] Pakistan contends that in the context of climate change this may often not be possible. This does not, however, absolve injuring States from taking restorative measures, in so far as possible, to re-establish the situation which existed prior to the commission of their internationally wrongful acts.[108] In Pakistan's view, much of the damage inflicted on the climate system is at the current stage irreversible. Pakistan contends that, in the context of climate change, compensation would be the most appropriate remedy. This is a view shared by other participants in these proceedings,[109] and has been recognized by the Court in the context of environmental damage.[110]

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Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024, para. 269.

[106] Insofar as the damage cannot be made good by restitution or compensation, the responsible States are obliged to provide satisfaction which comprises of an acknowledgement of the breach, an expression of regret or a formal apology.

[107] Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two, art. 35, commentary para. 1.

[108] *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, pp. 28–29, para. 43.

[109] See e.g. the Written Statement of OACPS, paras. 178–179; Written Statement of Singapore, para. 4.13; Written Statement of Bahamas, para. 242; Written Statement of the African Union, para. 282; Written Statement of Kenya, para. 6.95; Written Statement of Antigua and Barbuda, para. 554; Written Statement of Chile, para. 116; Written Statement of Egypt, para. 379; and Written Statement of Namibia, para. 137.

[110] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 78, para. 140 ("The Court is mindful that, in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment…"); *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010*, pp. 76–77, para. 185; *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, pp. 28–29, para. 43.